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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

ROSA DZUBAK, Plaintiff and Appellant, v. COUNTY OF LOS ANGELES, Defendant and Respondent.	B266301 (Los Angeles County Super. Ct. No. BC552144)

Appeal from a judgment of the Superior Court of Los Angeles County, Lisa H. Cole. Affirmed.

Graham & Martin LLP and Anthony G. Graham for Plaintiff and Appellant.

Fuentes & McNally, Raymond J. Fuentes and Sofia Sarin for Defendant and Respondent.

On July 18, 2014, plaintiff Rosa Dzubak filed a complaint against the County of Los Angeles alleging a single cause of action for "false arrest and imprisonment." Dzubak's claim was based on criminal charges the district attorney had brought against her in October of 2011. According to her complaint, the charges had been dismissed in December of 2011 for lack of evidence. The County demurred, arguing that Dzubak's action was time-barred under the applicable two-year statute of limitations. The trial court sustained the demurrer without leave to amend. On appeal, Dzubak argues she can amend her complaint to state a timely claim. We affirm.

FACTUAL BACKGROUND

A. Summary of Dzubak's Complaint

On July 18, 2014, plaintiff Rosa Dzubak filed a complaint against the County of Los Angeles alleging a single cause of action for "false arrest and imprisonment." The complaint alleged that on July 21, 2009, her former employer, Jim Nichols, falsely accused her of participating in a theft at the "Nichol's Restaurant." "As a result of these charges . . ., on June 8, 2010, a criminal complaint was filed against [Dzubak], who was arrested and detained in custody."

Approximately one year later, on June 16, 2011, the trial court held a preliminary hearing and "dismiss[ed] with prejudice . . . the charges against plaintiff due to lack of evidence." According to the complaint, Nichols approached Dzubak immediately after the preliminary hearing had ended, and told her he was "going to make sure [the case] g[ot] re-filed against [her]." Dzubak then saw Nichols speak with "the Deputy [District Attorney], and heard him demand 'action.' [The Deputy District Attorney] then came to speak with [Dzubak] and told her 'No matter what, I will re-file.'"

The complaint further alleged that Nichols subsequently filed an affidavit in which he "admitted that the Deputy [District Attorney] . . . told him that it was unlawful for [Dzubak] to be rearrested and charged with the same alleged crimes after such a dismissal. Despite the dismissal and the finding that there was no evidence to support the charge, [the County] four months later re-filed the exact same charges against [Dzubak], falsely

arrested and confined her. . . . [The Deputy District Attorney] . . . acted without due care in ignoring the law and instigating a new arrest warrant and thereby falsely arresting [Dzubak] for a second time." On December 5, 2011, "the District Attorney admitted [at a preliminary hearing] that there was no 'new evidence' to support re-filing the matter. The Judge then dismissed the matter with prejudice for a second time." Dzubak alleged that since the district attorney had filed the criminal cases against her, she "ha[d] been unable to find work because of the ongoing notoriety associated with her two arrests and trials," resulting in "financial injury."

The complaint also alleged Dzubak had "made a written claim against the [County]" on February 25, 2011, but did not receive a response.

B. The County's Demurrer

On October 8, 2014, the County filed a demurrer arguing that Dzubak's claim for false arrest and imprisonment was time-barred because she had filed her complaint more than two years after the date on which the second set of criminal charges against her had been dismissed. (See Code of Civ. Proc., § 335.1 [establishing two-year limitations period for personal injury claims]; Gov. Code, § 945.6, subd. (a)(2) [suit against public entity must be commenced within two years from the accrual of the cause of action when entity does not respond to plaintiff's written claim].) The County also argued that under Government Code sections 815 and 821.6, it was absolutely immune for "any acts undertaken by the District Attorney's Office in instituting and prosecuting the criminal action against plaintiff."

The demurrer was originally scheduled to be heard on August 11, 2015, in Department 91 of the Los Angeles Superior Court. On October 15, 2014, however, the presiding judge in Department 91 issued an order transferring the case to Department O. The order stated that "all pending motions and trial dates" had been vacated, and that the "receiving court would notify counsel when to appear for a Case Management/Trial Setting Conference." Dzubak's counsel filed a certificate of service confirming he had served the County with a copy of the transfer order.

On October 29, 2014, the County filed a new notice of demurrer stating that the matter was scheduled to be heard in Department O on May 1, 2015.

The County also filed a copy of the original demurrer, and a proof of service confirming the notice had been mailed to the office of Dzubak's counsel.

On May 1, 2015, the trial court held a hearing on the demurrer; plaintiff and her attorney did not appear at the hearing. The court sustained the demurrer without leave to amend, concluding that the complaint had been filed more than two years after Dzubak's cause of action had accrued. Three days later, the County filed a notice of ruling and a proposed judgment stating the following: "Plaintiff's complaint allegations establish that her claims are clearly and affirmatively time barred. The second set of criminal charges against her were dismissed on December [5], 2011. Given that the County never responded to her claim, she was required to file an action within two years of that date. The action was not filed until July 18, 2014. [¶] . . . [¶]. . . . Based on the face of the complaint, the action is clearly and affirmatively time barred. [Citations.] Plaintiff failed to file any opposition. In light of these facts, the demurrer is properly sustained without leave to amend." The County also provided certificates of service confirming it had mailed copies of the trial court's order of dismissal and the proposed judgment to Dzubak's counsel.

Dzubak subsequently filed a motion to vacate the order of dismissal, arguing that the County had failed to notify her the hearing date for the demurrer had been changed from August 11, 2015 to May 1, 2015.[1] Dzubak's counsel provided a declaration in support of the motion asserting that he had first learned of the new demurrer date "when notified of the [the trial court's] ruling." Dzubak argued that "due to lack of notice from [the County] or the Court of the new date, [she] did not have the ability to use her statutory right to amend or even respond to the demurrer." On May 29, 2015, the trial court signed the County's proposed judgment dismissing the action.[2]

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[1] The materials in the record do not indicate the specific date on which Dzubak filed her motion to vacate.

[2] Although the materials in the record indicate Dzubak's motion to vacate the order of dismissal was scheduled to be heard on September 9, 2015, it is unclear whether the motion was ever heard or ruled upon.

DISCUSSION

A. Standard of Review

"We apply a de novo standard of review to a trial court's order of dismissal following an order sustaining a demurrer. [Citation.] In other words, we exercise our 'independent judgment about whether the complaint states a cause of action as a matter of law.' [Citation.]. . . . '[W]e must assume the truth of all facts properly pleaded by the plaintiffs, as well as those that are judicially noticeable.' [Citation.]" (*Eckler v. Neutrogena* (2015) 238 Cal.App.4th 433, 438.)

"'Where a demurrer is sustained without leave to amend, the reviewing court must determine whether the trial court abused its discretion in doing so. [Citation.] It is an abuse of discretion to deny leave to amend if there is a reasonable possibility that the pleading can be cured by amendment. [Citation.] Regardless of whether a request therefore was made, unless the complaint shows on its face that it is incapable of amendment, denial of leave to amend constitutes an abuse of discretion. [Citation.] The burden is on the plaintiff to demonstrate how he or she can amend the complaint. . . . Plaintiff can make this showing in the first instance to the appellate court. [Citation.]' [Citation.]" (*Lee v. Los Angeles County Metropolitan Transportation Authority* (2003) 107 Cal.App.4th 848, 853-854.)

B. Dzubak's Proposed Amendments Fail to State a Timely Claim

Dzubak does not challenge the trial court's finding that, on its face, the complaint shows her claim for false arrest and imprisonment is time-barred under the applicable two-year statute of limitations. She argues, however, that she can cure this defect through amendment. Therefore, the sole issue presented in this appeal is whether Dzubak's proposed amendments state a timely claim.

1. Dzubak's proposed amendments

Dzubak argues that "if . . . given leave to amend she would have alleged the following additional facts: [¶] [During the preliminary hearings regarding

her now-dismissed criminal charges], the Trial Court identified the prosecutor as the 'Office of the City Attorney'. [Citations.] On February 25, 2011, [Dzubak] made a written claim against the City of Los Angles. . . . The City of Los Angeles never responded. [Dzubak] filed an action against the City . . . on August 29, 2012. [¶] After a demurrer and a special motion to strike wherein . . . [the City] failed to state that it was the wrong party, . . . [the City] finally admitted that it was not the proper party on March 15, 2013 and was dismissed March 20, 2013. [Citations.] The requisite statute of limitations should have been tolled during this entire period, since both the Trial Court misidentified . . . the appropriate party and the City of Los Angeles waited until after a demurrer and motion to strike had been heard to finally inform Appellant it was the wrong party. [¶] Shortly thereafter, on April 11, 2013, [Dzubak] made a written claim against Respondent County. The County never responded. The current action was then timely filed July 18, 2014."

The County argues that the allegations set forth in Dzubak's proposed amendments demonstrate her lawsuit is barred under the Government Claims Act (Gov. Code, § 900 et seq.[3] (the Government Claims Act or the Act)) because she failed to present a claim to the County within six months after her cause of action had accrued. (See §§ 905, 911.2 and 945.2.) According to the County, Dzubak's allegations show her cause of action accrued no later than December 5, 2011 (the date on which the second set of criminal charges against her were dismissed for lack of evidence), but she did not present a claim to the County until April of 2013. The County further asserts that although Dzubak alleges she presented a claim to a different public entity (the City of Los Angeles) within six months after her cause of action had accrued, this was not sufficient to comply with the Act's requirements.

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[3] All statutory references are to the Government Code, unless otherwise indicated.

2. Summary of requirements under the Government Claims Act

"Suits for money or damages filed against a public entity are regulated by statutes contained in division 3.6 of the Government Code, commonly referred to as the Government Claims Act. . . . '[S]ection 905 requires the presentation of "all claims for money or damages against local public entities," subject to exceptions not relevant here. Claims for personal injury and property damage must be presented within six months after accrual; all other claims must be presented within a year. (§ 911.2.) "[N]o suit for money or damages may be brought against a public entity on a cause of action for which a claim is required to be presented . . . until a written claim therefor has been presented to the public entity and has been acted upon . . . or has been deemed to have been rejected. . . ." (§ 945.4.) "Thus, under these statutes, failure to timely present a claim for money or damages to a public entity bars a plaintiff from filing a lawsuit against that entity." [Citation.]' [Citation.]" (*DiCampli-Mintz v. County of Santa Clara* (2012) 55 Cal.4th 983, 990-991 (*DiCampli-Mintz*).)

"Section 905 requires that . . . 'all claims for money or damages against local public entities' must be 'presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910)' of the Government Code. '"Local public entity" includes a county, city, district, public authority, public agency, and any other political subdivision or public corporation in the State. . . .' (§ 900.4.)" (*DiCampli-Mintz, supra,* 55 Cal.4th at p. 991.)

"Section 915(a) provides, 'A claim . . . shall be presented to a local public entity by either of the following means: [¶] (1) Delivering it to the clerk, secretary or auditor thereof. [¶] (2) Mailing it to the clerk, secretary, auditor, or to the governing body at its principal office.' Section 915(e)(1) clearly and narrowly sets forth how actual receipt may meet the presentation requirement: 'A claim . . . shall be deemed to have been presented in compliance with this section even though it is not delivered or mailed as provided in this section if, within the time prescribed for presentation thereof, any of the following apply: [¶] (1) It is actually received by the clerk, secretary, auditor or board of the local public entity.' [Citation.]" (*DiCampli-Mintz, supra,* 55 Cal.4th at p. 991.)

"Even if the public entity has actual knowledge of facts that might support a claim, the claims statutes still must be satisfied. [Citation.] 'The filing of a claim is a condition precedent to the maintenance of any cause of action against the public entity and is therefore an element that a plaintiff is required to prove in order to prevail.' [Citations.] (*DiCampli-Mintz, supra*, 55 Cal.4th at p. 991.)

3. Dzubak's proposed amendments show her claim is precluded under the Government Claims Act

Dzubak does not dispute any of the following facts: (1) her claim against the County is subject to the Government Claims Act; (2) her false arrest claim accrued no later than December 5, 2011, which is the date the second set of criminal charges against her was dismissed; (3) the County was the local public entity where she was required to present her claim; (4) she did not file a claim with the County until more than two years after the date of accrual.

These undisputed facts show that Dzubak failed to present her claim to the appropriate public entity (the County) within the six-month period set forth in section 911.2, which would normally preclude her from filing a lawsuit. (See §§ 911.2, 945.2; *DiCampli-Mintz, supra*, 55 Cal.4th at p. 991.) Dzubak, however, argues that in this case the date she presented her claim to the County should relate back to the date on which she presented her claim to the City of Los Angeles (February 25, 2011) because: (1) the City did not inform her it was the wrong defendant until March of 2013; and (2) during the preliminary hearings on her criminal charges, which occurred in June and December of 2011, the trial court referred to the district attorney as "the 'Office of the City Attorney'." Thus, Dzubak appears to contend that because the trial court and the City engaged in conduct that caused her to believe the City was the proper defendant, the six-month claim period set forth in section 911.2 should be tolled until the date on which the City admitted it was not the proper defendant, which occurred in March of 2013.

Dzubak's appellate brief provides no argument or legal citation in support of her assertion that the City and trial court's actions justify tolling the six-month claim period set forth section 911.2. Dzubak's entire

discussion of the "tolling" issue consists of a single sentence stating: "The requisite statute of limitations should have been tolled during this entire period, since both the Trial Court misidentified . . . the appropriate party and the City of Los Angeles waited until after a demurrer and motion to strike had been heard to finally inform Appellant it was the wrong party."

As a general rule, "[a]n appellant must provide an argument and legal authority to support his contentions. This burden requires more than a mere assertion that the judgment is wrong. 'Issues do not have a life of their own: If they are not raised or supported by argument or citation to authority, [they are] . . . waived.' [Citation.] It is not our place to construct theories or arguments to undermine the judgment and defeat the presumption of correctness. When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived." (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852.) Dzubak's conclusory assertion that "[t]he requisite . . . limitations [period] should have been tolled" based on the conduct of the City and the trial court is insufficient to satisfy her burden to present a reasoned argument and citation to legal authority.

Even if we were to excuse Dzubak's failure to present an adequate legal argument, the Supreme Court's holding in *DiCampli-Mintz, supra*, 55 Cal.4th 983, demonstrates her argument fails on the merits. The plaintiff in *DiCampli-Mintz* sustained injuries during a surgery performed at a Santa Clara County hospital. Following the incident, plaintiff's attorney presented a medical malpractice claim to the "Santa Clara County Risk Management Department" (the Department), which was responsible for "deal[ing] with legal claims against the County." (*Id.* at p. 988, fn. 4.) The plaintiff did not, however, serve the claim on any of the statutorily-designated recipients listed in section 915 (the clerk, secretary or auditor of the County), nor did she request that the claim be forwarded to any of those persons. A Department employee subsequently contacted plaintiff's counsel regarding the claim, and provided the name of the attorney handling the County's defense. The employee did not "mention that the letter failed to satisfy section 915's delivery requirements. Plaintiff never received written notice that her claim

was untimely or presented to the wrong party." (*Id.* at p. 988.) After the County failed to respond to her claim, the plaintiff filed a lawsuit.

The County filed a motion for summary judgment arguing that the plaintiff had "failed to comply with the Government Claims Act because her claim was never presented to or received by a statutorily designated recipient as required by section 915. In opposition, plaintiff argued that she had 'substantially complied' with the Government Claims Act . . . by delivering [a claim] to the . . . Department," which plaintiff described as "the county department most directly involved with the processing and defense of tort claims against the County." (*DiCampli-Mintz, supra*, 55 Cal.4th at p. 980.) The trial court granted the County's motion for summary judgment, concluding that the evidence established the plaintiff had failed to serve a claim on any of the statutorily-designated County officials.

The Supreme Court affirmed the judgment, holding that the language of the Act required a claim to be served on, or "actually received" by, one of the statutorily-designated persons of the proper public entity within six months of the date on which the claim had accrued. The Court further held that "[t]he claimant bears the burden of ensuring . . . the claim is presented to the appropriate public entity" (*DiCampli-Mintz, supra*, 55 Cal.4th at p. 991), and that "an undelivered or misdirected claim fails to comply with the statute." (*Id.* at pp. 992-993.)

Under the reasoning of *DiCampli-Mintz*, we reject Dzubak's suggestion that she was excused from presenting a claim to the County within the six-month period set forth in section 911.2 because the City failed to notify her it was the wrong public entity defendant until after the claims period had expired. Nor do we accept her assertion that she was excused from complying with the claim requirement because the trial court allegedly identified the district attorney was a "City Attorney" during her criminal proceedings. *DiCampli-Mintz* makes clear that Dzubak had the burden to determine the proper local entity, and neither the City nor the trial court had any duty to apprise her of that fact.

Dzubak also argues the trial court should have granted her motion "to set aside and vacate the dismissal" based on the fact that the County failed to notify her the date of the demurrer hearing had been changed. Dzubak

contends that if the court had vacated the dismissal and "reset the [demurrer] hearing," she would have "filed a First Amended Complaint with the additional facts set forth [in her appellate brief]." Although Dzubak alleges the County failed to notify her of the demurring hearing date, the record contains a file-stamped certificate of service indicating that the County did serve Dzubak's attorney with a notice of the new demurrer hearing date. In any event, as discussed above, the proposed amendments Dzubak would have presented at a rehearing on the demurrer show her lawsuit is time-barred under the Government Claims Act Accordingly, even if the trial court had vacated the dismissal, and allowed an amended complaint, Dzubak's proposed amendments still fail to state a timely claim.

DISPOSITION

The judgment is affirmed. Respondent shall recover its costs on appeal.

ZELON, J.

We concur:

PERLUSS, P. J.

KEENY, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.